

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



September 18, 2009

Timothy J. Haines
Deputy Director
California Energy Resources Scheduling
Department of Water Resources
1416 Ninth Street
Sacramento, California 95814

Dear Mr. Haines,

In your letter dated July 29, 2009, the California Department of Water Resources (CDWR) requested that the Executive Director of the California Public Utilities Commission (CPUC or Commission) concur in CDWR's determination that a change to CDWR's contract with Mountain View Power Partners (MVPP) is administrative in nature and therefore "not material" under the terms of Water Code Section 80110(c). Under the AB 3058 statutory provisions, a change to a CDWR contract does not need to be presented to the full membership of the Commission if it is "not material" i.e., "if it is only administrative in nature or the change in ratepayer value results in ratepayer savings, not to exceed twenty-five million dollars (\$25,000,000) per year." (Water Code Section 80110(c)(5)(B).) In that case, only the concurrence of the CPUC's Executive Director with the CDWR's determination is required. (Water Code Section 80110(c)(5)(B).)

Unfortunately, in this case, I do not concur in CDWR's determination that the proposed change to the MVPP contract is administrative in nature. Under its existing contract with MVPP, CDWR purchases power from MVPP, but does not purchase the "green attributes" associated with that power. Under the modified contract, CDWR will receive both the power and the green attributes for the period beginning January 1, 2008 in order to "allow . . . SCE to receive credit for the reattached Green Attributes for Renewable Portfolio Standards purposes." Thus, the proposed change adds an additional product to what has been purchased by CDWR for the benefit of SCE.

Generally, the most material terms of a contract are what is purchased as well as the price paid. Here an additional product is being added to what CDWR has purchased. (I recognize that there is no change in the price CDWR will be paying, as SCE is paying additional sums pursuant to a side letter.) Accordingly, based on general principles of contract law, I must conclude that the change is material.

Furthermore, the proposed changes are not "administrative in nature". The following are some examples of administrative changes: (i) a change in the payment schedule, or (ii) a change that provides a new method for dispute resolution. The amendment in each of these examples changes how the contract will be administered and not what is being purchased. Because the proposed change would instead change what is being purchased pursuant to the contract, I cannot concur in CDWR's determination that the proposed change is administrative in nature.

Sincerely,

A handwritten signature in dark ink, appearing to read "Paul Clanon", is written over a large, stylized, light-colored mark that resembles a large "X" or a checkmark.

Paul Clanon
Executive Director

Attachment

cc: Julie Fitch
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